

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Itasca Images, LLC, and
Tony Webster,

Plaintiffs,

v.

Shutterstock, Inc., et al.,

Defendants.

Case No. 21-cv-287 (JRT/DTS)

JOINT STATUS REPORT

Plaintiffs Itasca Images, LLC and Tony Webster (collectively “Plaintiffs” or “Itasca”) and Defendant Shutterstock, Inc. (“Shutterstock”) jointly file this status report in compliance with the Court’s December 2, 2021 order.

I. Joint Statement

The parties jointly believe this month’s status conference may be skipped. The parties will work together over the coming weeks to sharpen any potential issues in dispute to be prepared to bring them to the Court by the April conference. The parties’ counsel jointly agree to work collaboratively over the coming weeks to set concrete estimates, expectations, and deadlines for any issues for which progress has been promised.

II. Plaintiffs’ Status Report

a. Progress since last month

Plaintiffs made additional document productions on March 1, 2022. The parties all served additional discovery requests late last month. Plaintiffs are working on their responses. Plaintiffs have no issues requiring the Court’s intervention at this time. Plaintiffs continue to review documents and reserve the right to bring forward any deficiencies at the next conference if not resolved by then.

b. Plaintiffs raise for preservation the following issues, but are hopeful they will be resolved by the next report

1. Last month's status report identified the outstanding issue of analytics data. This has not been resolved. Shutterstock was ordered to produce analytics data relating to the Photographs in suit, and otherwise agreed to produce analytics and log data referencing the Photographs. They have not done so. Specifically, Plaintiffs have no documents from: Google Analytics (though Plaintiffs have been advised that the analytics data that has been produced may include some limited data from Google Analytics), New Relic, Criteo, Sumo Logic, Impact Radius, Extole, Foresee, Rank Science, Sift Science, CloudFront, or S3. We understand this will all be produced.

2. Last month's status report preserved the issue of Shutterstock skipping certain photographs (asset ID numbers) in their document productions. This has not been resolved. Plaintiffs have not received documents or supplemental interrogatory responses, but we understand they will be forthcoming.

3. Last month's status report preserved the issue of malformed JSON files in Shutterstock's productions. This has not been resolved, but we understand it will be forthcoming.

4. Shutterstock has not identified custodians for many documents. Plaintiffs will need to know the names of custodians for deposition purposes.

5. Shutterstock was ordered to produce their reviewer guidelines. They produced a version with missing content which was dated 2022, but not the version(s) as applied to the Photographs in suit in 2019 and 2020.

c. Plaintiffs' responses to Shutterstock's issues raised in Section III(a)

Plaintiffs have not been advised of any unresolved deficiencies in their document productions, but when Shutterstock does bring them to Plaintiffs' attention, Plaintiffs will seek to promptly address the matter. Plaintiffs hope that this happens sooner than later to give the parties time to resolve it before the next conference.

III. Shutterstock's Status Report

a. Progress since last month

Shutterstock is in the process of reviewing Plaintiffs' additional document productions. While minor concerns have been identified, they have not been fully fleshed out with Plaintiffs. Therefore, Shutterstock does not have any issues requiring Court intervention at this time. However, Shutterstock reserves its right to raise any document production deficiencies with the Court in the next status conference(s). As stated above in Plaintiffs' section, the parties all served additional discovery requests, and Shutterstock is working on its responses, which are due at the end of the month.

b. Shutterstock's responses to Plaintiffs' issues raised in Section II.b

Shutterstock responds to the points above as follows:

1. Shutterstock expects the additional Google Analytics data to be produced by or shortly after the time of the filing of this Report. Shutterstock believes that it was compliant with the Court's order prior to the last conference but it has offered to provide additional material not because it is warranted, but in the interest of avoiding further motion practice. However, Plaintiffs have never formally requested any of the additional material (New Relic, Criteo, Sumo Logic, Impact Radius, Extole, Foresee, Rank Science, Sift Science, etc.), nor has it been ordered by this Court, and therefore Shutterstock cannot understand why Plaintiffs "understand this will all be produced." In any event, there is no useful log data in these systems that was not stored in the account paper trail or image history data already produced, so there is nothing further that they believe merits production. Notably, Plaintiffs have not offered any basis to claim that they would need this amount of data in a claim of this nature, much less anything beyond that scope.

2. Shutterstock's response Interrogatory No. 2 will be updated when Shutterstock produces the analytics data raised in Plaintiffs' Section II.b.1. Regardless, as Shutterstock has confirmed from the outset of the case by identifying all licenses at issue, no licenses were issued to the 4 "omitted" images.

3. Shutterstock has collected the valid JSON files, and anticipates producing this before the next conference.

4. The parties are working to resolve what data Plaintiffs believe is lacking a custodian.

5. Shutterstock is locating the Reviewer Guidelines from 2019 and 2020 and will produce them if they exist.

Dated: March 22, 2022

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